

**DETERMINATION AND FINDINGS
FOR
SOLE SOURCE PROCUREMENT**

1. **Authorization**¹

- DC Code § 34-801
- DC Code § 34-804
- 15 DCMR § 3700

2. **Minimum Need**

The Office of the People’s Counsel requests the services of McNees Wallace & Nurick LLC, and Matthew I. Kahal, Economic Consultant.

3. **Estimated Fair and Reasonable Price**

\$15,000

4. **Facts That Justify a Sole Source Procurement**

A. The District of Columbia Office of the People’s Counsel (“DC OPC” or “Office”) is an independent agency of the District of Columbia government. By law, it is the advocate for consumers of natural gas, electric and telephone services in the District. District of Columbia law designates the Office as a party to all utility-related proceedings before the District of Columbia Public Service Commission (“DC PSC”). The Office also represents the interests of District ratepayers before federal regulatory agencies. The Office is authorized to investigate the operation and valuation of utility companies independently of any pending proceedings.

McNees Wallace & Nurick LLC will provide legal services to a consortium of agencies, DC PSC & DC OPC, Maryland Public Service Commission & Maryland Office of People’s Counsel, Delaware Public Service Commission & Delaware Division of the Public Advocate, New Jersey Board of Public Utilities & New Jersey Ratepayer Counsel. The legal service will involve filing a petition

¹ Procurement authority is vested in the Commission pursuant to § 13(c) (2) of the Residential Real Property Seller Disclosure, Funeral Services Date Charge, and Public service Commission Independent Procurement Authority Act of 1998 (D.C. Law 12-263). The Commission is statutorily exempt from the D.C. procurement rules as set forth in D.C. Official Code § 1-1181 et seq.

DC Code § 34-804, hereby established within the Public Service Commission of the District of Columbia, as established by D.C. Code § 34-801, as Office to be known as the “Office of the People’s Counsel.” The Office shall be a party, as of right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning a public utility operating in the District of Columbia.

15 DCMR § 3700: Public Utilities and Cable Television – Public Service Commission Rules of Practice and Procedure.

of the Federal Power Act Rule 206 complaint against PHI companies and Baltimore Gas and Electric company (“BG&E”) before the Federal Energy Regulatory Commission. The petition of these agencies will be referred to as the Joint Defense Agreement (“JDA”). The services provided by McNees Wallace & Nurick LLC will involve Phases I, II and III. The legal tasks covered in Phase I this procurement will include the following:

- Preparing and filing complaints, under Section 206 of the Federal Power Act, against BG&E and the various transmission-owning operating companies of PHI;
- Challenging the continued justness and reasonableness of BG&E's and PHI's transmission formula rate return on equity ("ROE") and formula rate protocols;
- Including a technical component of the Section 206 complaint drafted by Matthew I. Kahal, Economic Consultant;
- Reviewing and proposing revisions to affidavits in support of the complaint;
- Drafting and filing a motion for leave to answer and answer in response to BG&E's and PHI's responses to the formal complaint;
- Coordinating among parties of the JDA;
- Coordinating with expert witnesses and affiants who will be supporting the formal complaint;
- Participating in a "pre-meeting" with FERC staff prior to the filing of the formal complaint;
- Filing the complaint with the Federal Energy Regulatory Commission ("FERC"); and
- Reviewing FERC's order in response to the complaint.

After the conclusion of Phase I of this complaint filing, McNees Wallace & Nurick LLC will prepare list of activities to be completed in Phases II and III of this project.

Matthew I. Kahal, Economic Consultant, will provide technical services for the JDA’s petition of the Federal Power Act Rule 206 complaint against PHI companies and BG&E company before the Federal Energy Regulatory Commission. The challenge is whether the currently-authorized return on equity (“ROE”) in the PHI/BG&E transmission service formula rates (i.e., Network Integration Transmission Service) remains just and reasonable, in light of the sharp reductions in the market cost of capital that has taken place over the past several years.

The technical tasks covered in this procurement will involve Phases I, II and III. The tasks performed under this procurement include the following:

Phase I:

- Conducting the background research on recent FERC precedents on electric utility cost of equity rulings;
- Conducting of a cost of equity study, developing recommendations and preparing an affidavit that could support a Section 206 complaint; and
- Providing technical assistance to counsel, as needed, regarding the drafting of the complaint.

Phase II:

- Replying to response by PHI/BG&E;
- Analyzing the PHI/BG&E responses, conducting discovery on cost of equity testimony and/or affidavits, and preparing data request; and
- Reviewing data responses and preparing testimony/affidavit to rebut the PHI/BG&E filing.

Phase III:

- Attending post testimony, hearings and settlement conferences;
- Participating in hearings to defend testimony;
- Assisting with cross-examination of opposing witnesses;
- Attending/participating with settlement conferences, and
- Offering miscellaneous assistance with post-hearing briefs.

B. McNeese Wallace & Nurick LLC, and Matthew I. Kahal, Economic Consultant, are exceptionally well qualified to provide assistance to DC-OPC because it:

- (i) DC OPC joined the Delaware Public service Commission, Delaware Division of the Public Advocate; Maryland Public Service Commission, Maryland Office of the People's Counsel ; District of Columbia Public Service Commission; State of New Jersey Board of Public Utilities, and State of New Jersey Division of the Rate Counsel in selecting these experts to file a petition of the Federal Power Act Rule 206 complaint against PHI companies and Baltimore Gas and Electric company (“BG&E”) before the Federal Energy Regulatory Commission;
- (ii) extensive experience representing consumers’ interest related to wholesale power markets, and cost recovery of power transmission projects;

(ii) provided expert advice and technical analysis for a variety of clients regarding wholesale electricity markets and return on equity of power transmission projects;

C. It is for the reasons outlined herein that it is recommended that a sole source contract be awarded to McNees Wallace & Nurick LLC, and Matthew I. Kahal, Economic Consultant.

5. **Certification by the Contracting Officer**

I hereby certify that the above facts are accurate and complete.

Frank G. Scott, Jr.
Contracting Officer

Date

DETERMINATION

Based on the above findings and in accordance with the District of Columbia procurement regulations: *DC Law: 34-804; DC Law: 34-801; and 15 DCMR §3700*,
I hereby determine that the award of a sole source contract for the services described herein is in the best interest of the District of Columbia Office of the People's Counsel.

Sandra Mattavous-Frye
People's Counsel

Date

DETERMINATION

Based on the above findings and in accordance with the District of Columbia procurement regulations: *DC Law: 34-804; DC Law: 34-801; and 15 DCMR §3700*,

I hereby determine that the award of a sole source contract for the services described herein is in the best interest of the Office of the People's Counsel.